IMBI WORLD SDN. BHD.

v.

DELUXE TOURS SDN. BHD. & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
MAHADEV SHANKAR JCA
ABU MANSOR ALI JCA
ABDUL MALEK AHMAD JCA
[CIVIL APPEAL NOS: W-02-285-1995 & W-02-405-1995]
3 JUNE 1997

CIVIL PROCEDURE: *Summary judgment - Landlord and tenant - Admission of part of claim - Triable issues - Interest - Damages - Rules of the High Court 1980, O. 14*

LAND LAW: *Sale of land - Vacant possession - Payment of balance purchase price - Tenancy - Oral tenancy - Vacant possession, claim for*

LANDLORD & TENANT: *Determination - Monthly tenancy - Whether earlier tenancy binding on subsequent owner of land - National Land Code 1965, s. 213 - Recovery of possession - Notice to quit - Holding over - Claim for double rental - Civil Law Act 1956, s. 28(4)(a) - Interest - Damages*

The 1st appellant was the registered proprietor of a piece of property since 16 November 1990. By virtue of a Sale and Purchase Agreement dated 20 July 1992 ('the SPA') the 1st appellant sold the property to the 2nd appellant. One of the conditions of the SPA was that the 1st appellant was to deliver vacant possession of the property to the 2nd appellant on receipt of the balance purchase price. The balance purchase price was paid on 28 January 1993 and the transfer was completed on 5 May 1993.

The respondent was a tenant occupying two units of flats on the property ('the premises'). By a letter dated 30 July 1992, the solicitors for the 1st appellant gave a notice to quit to the respondent to terminate the tenancy on the basis that it was a monthly tenancy and to hand over vacant possession of the premises on or before 31 August 1992. The respondent did not comply with the said notice to quit.

The 1st and 2nd appellant then agreed that in lieu of the delivery of vacant possession of the property, the 1st appellant shall pay the interest earned on the balance purchase price to the 2nd appellant calculated from 28 January 1993 ie, the date of payment of the balance purchase price to the date when the respondent delivered vacant possession of the premises. Vacant possession was delivered on 28 February 1994.

The appellants then applied for summary judgment under O. 14 of the Rules of the High Court 1980 claiming the following against the respondent:

(a) Vacant possession;

(b) For the 1st appellant - double rental from 1 September 1992 ie, the day after the expiry of the notice to quit, to 4 May 1993 ie, the day before the property was transferred;

(c) For the 2nd appellant - double rental from 5 May 1993 to 28 February 1994 ie, the date vacant possession was delivered; and

(d) For the 1st appellant - interest earned on the balance purchase price which the 1st appellant had to pay to the 2nd appellant computed from 28 January 1993 ie, the date of payment of the balance purchase price, to 28 February 1994 ie, the date vacant possession was delivered.

The learned trial Judge held that since the respondent had been a tenant on the premises since 1982 on a yearly tenancy until the 1st appellant took over the property, and since there was no written agreement to state that it was a monthly tenancy from then on, the tenancy remained a yearly tenancy and hence the one month notice to quit given was not valid. He accordingly dismissed the application for summary judgment.

The present appeal was against the decision of the learned trial Judge.

Held:
Per Abdul Malek Ahmad JCA

[1] There was no documentary evidence to support the respondent's claim that the earlier tenancy had been a yearly tenancy. Even if the respondent was a tenant on a yearly tenancy with the previous landlord, by virtue of s. 213 of the National Land Code 1965, the 1st appellant was not bound by the terms of the tenancy that existed between the previous owner of the property and the respondent when he bought over the premises on 16 November 1990. It was entirely up to the 1st appellant to state on what terms the tenancy would be allowed to continue, when it was allowed to be continued.

[2] Learned Counsel for the respondent had conceded that the tenancy with the 1st appellant was a monthly tenancy which meant that the notice to quit was valid, and the respondent had also agreed to pay the double rental but not the damages. On this concession alone, it meant that there were no triable issues as regards the monthly tenancy and the validity of the notice to quit, and the double rental. Only damages became an issue.

[3] The general rule as to the measure of damages is that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation. The damages asked for here were only in the form of the reimbursement of the interest for the period the appellants were deprived of the possession of the premises and since this was the direct result of the respondent's wrongdoing, the appellants were certainly entitled to claim them.

[4] As for the issue of double rental, once there was a holding over of the tenancy of a property, the landlord would be entitled to double rent calculated from the date of expiry of the notice to quit to the date when possession was handed over. The supporting documentary evidence available indicated that the tenancy was a monthly tenancy and the respondent was holding over after the expiry of the notice to quit. Their subsequent delivery of vacant possession only showed that they knew they were occupying the premises wrongly. In these circumstances, the appellants were certainly entitled to double rental after the expiry of the tenancy.

[5] There were therefore no issues to be tried and the appeal was allowed with costs. Double rental, damages and interest as claimed by the appellant was ordered.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Penghakiman terus - Tuan tanah dan penyewa - Kemasukan sebahagian dari tuntutan - Isu-isu yang boleh dibicarakan - Faedah - Gantirugi - Kaedah-kaedah Mahkamah Tinggi 1980, A. 14*

UNDANG-UNDANG TANAH: *Penjualan tanah - Milikan kosong setelah pembayaran baki harga belian - Penyewaan - Penyewaan secara lisan - Tuntutan untuk milikan kosong*

TUAN TANAH & PENYEWA: *Penamatan - Penyewaan Bulanan - Samada penyewaan yang awal mengikat pemilik tanah yang berikutnya - Kanun Tanah Negara, s. 213 - Pengambilan-balik pemilikan - Notis untuk mengosongkan - Pemegangan lebih masa - Tuntutan sewaan berganda - Akta Undang-Undang Sivil 1956, s. 28(4)(a) - Faedah - Gantirugi*

Perayu pertama adalah tuanpunya berdaftar sebidang hartanah sejak dari 16 November 1990. Menurut satu Perjanjian Jualbeli bertarikh 20 Julai 1992 ('SPA') perayu pertama telah menjual hartanah itu kepada perayu kedua. Salah satu syarat SPA tersebut adalah bahawa perayu pertama hendaklah menyerahkan milikan kosong hartanah tersebut kepada perayu kedua ketika menerima baki harga belian. Baki harga belian itu telah dibayar pada 28 Januari 1992 dan pindahmilik telah disiapkan pada 5 Mei 1993.

Responden adalah penyewa yang menghuni dua unit rumah pangsa atas hartanah itu ('premis tersebut'). Melalui surat bertarikh 30 Julai 1992, peguamcara bagi pihak perayu pertama telah memberikan notis untuk mengosongkan kepada responden untuk menamatkan penyewaan itu atas dasar bahawa ianya merupakan penyewaan bulanan dan untuk menyerahkan milikan kosong premis tersebut pada atau sebelum 31 Ogos 1992. Responden tidak mematuhi notis untuk mengosongkan tersebut.

Perayu pertama dan kedua kemudiannya telah bersetuju bahawa sebagai ganti bagi penyerahan milikan kosong hartanah itu, perayu pertama akan membayar faedah yang diperolehi atas baki harga belian kepada perayu kedua yang dihitung daripada 28 Januari 1993 iaitu tarikh pembayaran baki harga belian hingga kepada tarikh bilamana responden menyerahkan milikan kosong premis tersebut. Milikan kosong telah diserahkan pada 28 Februari 1994.

Perayu-perayu kemudiannya telah memohon untuk mendapatkan penghakiman terus di bawah A. 14 Kaedah-kaedah Mahkamah Tinggi 1980 menuntut yang berikut terhadap responden:

(a) milikan kosong;

(b) Untuk perayu pertama – sewaan berganda daripada 1 September 1992 iaitu tarikh selepas luputnya notis untuk mengosongkan, hingga 4 Mei 1993 iaitu pada hari sebelum hartanah itu dipindahmilik;

(c) Untuk perayu kedua – sewaan berganda daripada 5 Mei 1993 hingga 28 Februari 1994 iaitu tarikh milikan kosong diserahkan; dan

(d) Untuk perayu pertama – faedah yang diperolehi ke atas baki harga belian yang mana perayu pertama terpaksa bayar kepada perayu kedua yang dihitung daripada 28 Januari 1993 iaitu tarikh pembayaran baki harga belian, hingga kepada 28 Februari 1994 iaitu tarikh milikan kosong diserahkan.

Hakim perbicaraan yang bijaksana telah memutuskan bahawa oleh kerana responden telah menjadi penyewa di premis itu sejak 1982 atas dasar tahunan sehingga perayu pertama mengambil alih hartanah itu, dan oleh kerana tidak

terdapat perjanjian bertulis untuk menyatakan bahawa ianya adalah penyewaan bulanan dari sejak masa itu, penyewaan itu kekal sebagai penyewaan tahunan dan dengan itu notis untuk mengosongkan selama satu bulan yang telah diberikan itu adalah tak sah. Beliau berikutan itu, telah menolak permohonan untuk penghakiman terus.

Rayuan semasa ini adalah terhadap keputusan Hakim perbicaraan yang bijaksana.

Diputuskan:
Oleh Abdul Malek Ahmad HMR

[1] Tidak terdapat keterangan dokumentari untuk menyokong dakwaan responden bahawa penyewaan yang awal merupakan penyewaan tahunan. Walaupun jika responden merupakan penyewa atas dasar penyewaan tahunan dengan tuan tanah yang terdahulu, menurut s. 213 Kanun Tanah Negara, perayu pertama adalah tidak terikat oleh terma-terma penyewaan yang wujud antara tuanpunya yang dahulu hartanah itu dan responden apabila beliau membeli premis itu pada 16 November 1990. Ianya adalah terpulang kepada perayu pertama untuk menyatakan atas syarat apakah penyeweaan itu akan dibenarkan untuk berterusan, ketika ianya dibenarkan untuk diteruskan.

[2] Peguam yang bijaksana bagi pihak responden telah bersetuju bahawa penyewaan dengan perayu pertama adalah penyewaan bulanan yang bermakna bahawa notis untuk mengosongkan itu adalah sah, dan responden telah juga bersetuju untuk membayar sewaan berganda tetapi tidak membayar gantirugi. Atas konsesi ini sahaja, ianya bermakna bahawa tidak terdapat isu-isu yang boleh dibicarakan berhubung dengan sewaan bulanan dan keesahan notis untuk mengosongkan, serta sewaan berganda. Hanya gantirugi sahaja yang menjadi isu.

[3] Kaedah umum berhubung dengan pengiraan gantirugi adalah jumlah wang yang mana akan meletakkan pihak yang telah terjejas, atau yang telah menanggung kerugian, dalam kedudukan yang sama seperti yang akan dia alami jika beliau tidak mengalami kesalahan bagi yang mana beliau kini mendapat pampasan atau reparasinya. Gantirugi yang diminta di sini adakah hanya dalam bentuk pembayaran balik faedah bagi tempoh perayu-perayu itu dilucuthak milikan premis itu dan oleh kerana ini merupakan hasil secara langsung akan perbuatan salah responden, maka perayu dengan itu tentu sekali berhak untuk menuntut daripada mereka.

[4] Berhubung isu penyewaan berganda, apabila terdapat pemegangan lepas masa ke atas penyewaan sesebuah hartanah, tuan tanah akan berhak kepada sewaan berganda yang dikira daripada tarikh luput notis untuk mengosongkan hingga kepada tarikh apabila milikan diserahkan. Keterangan dokumentari menyokong yang ada menunjukkan bahawa penyewaan itu adalah penyewaan bulanan dan responden sedang memegang melebihi masa selepas luputnya notis untuk mengosongkan. Dalam keadaan ini, penyerahan milikan kosong oleh mereka hanya menunjukkan bahawa mereka mengetahui mereka menduduki premis itu secara salah. Dalam keadaan ini, perayu tentu sekali berhak kepada sewaan berganda selepas luput penyewaan itu.

[5] Dengan itu tidak terdapat isu-isu untuk dibicarakan dan rayuan itu telah dibenarkan dengan kos di sini dan Mahkamah di bawah. Sewaan berganda, gantirugi dan faedah sepertimana yang dituntut oleh perayu juga diperintahkan.

[Rayuan dibenarkan.]

Cases referred to:
Than Kok Leong v. Low Kim Hai [1983] 1 MLJ 187 ***(refd)***
Lemon v. Lardeur [1946] 1 KB 613 ***(refd)***
Queen's Club Gardens Estate Ltd. v. Bignell [1924] 1 KB 117 ***(cit)***
Simmons v. Corssley [1922] 2 KB 95 ***(cit)***
Cheng Hang Guan & Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & Ors. [1993] 3 MLJ 352 ***(refd)***
Mohamed Abu Bakar s/o Yusof v. PA Syed Aboothahir s/o P Ahmed [1990] 1 MLJ 26 ***(refd)***
Gracie Teo v. Tay Leng Hong & Ors. [1987] 2 MLJ 435 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 28(4)
National Land Code 1965, ss. 213(3), 228(2)
Rules of the High Court 1980, O. 14

Other sources referred to:
Atkin's Encyclopaedia of Court Forms in Civil Proceedings, 2nd Edn., Vol. 24(1) 1995, pp. 55, 56

[Appeal from High Court Malaya, Kuala Lumpur; Suit No: S5-22-583-93]

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JUDGMENT

Abdul Malek Ahmad JCA:

These two appeals were heard together and, for the purposes of this judgment we will, where the appellants are referred to separately, refer to the appellant b in the first appeal as the first appellant and the appellant in the second appeal as the second appellant. The respondent is the same in both appeals.

With effect from 16 November 1990, the first appellant was the registered proprietor of the property held under Grant 12089 Lot 200 Section 67 Town c of Kuala Lumpur (hereinafter 'the property') which was sold for RM20 million to the second appellant by virtue of a sale and purchase agreement (hereinafter 'the agreement') entered into on 20 July 1992. On the property was one house and twenty-four apartments known as Cho Tek Flats situated at Jalan Imbi, Kuala Lumpur. The respondent was at all material times the tenant of units No. 115 and No. 117 of Cho Tek Flats (hereinafter 'the premises') on a month d to month basis at a monthly rental of RM3,600.

By letter dated 30 July 1992 from the solicitors for the first appellant to the respondent, which was received by the respondent on the same date, the first appellant had given notice to the respondent to terminate the monthly tenancy e and to hand over vacant possession of the premises on or before 31 August 1992.

One of the conditions of the agreement was that the first appellant was to deliver to the second appellant vacant possession of the property on receipt of the balance purchase price. The balance purchase price of RM18 million f was paid by the second appellant to the first appellant on 28 January 1993 and the transfer was completed on 5 May 1993.

The respondent did not comply with the notice to quit by 31 August 1992. It was subsequently agreed between the first appellant and the second appellant g that in lieu of delivery of vacant possession, the first appellant shall pay interest earned on the RM18 million to the second appellant calculated from 28 January 1993, when it was paid, up to 28 July 1993 and thereafter from 29 July 1993 until 28 February 1994, when the respondent delivered vacant possession.

h Apart from claiming for vacant possession of the premises, the appellants had also prayed for double rental from 1 September 1992, the day after the expiry of the notice to quit, to 4 May 1993, the day before the property was transferred to the second appellant, to be paid to the first appellant, and from 5 May 1993, when the transfer was completed, to 28 February 1994, when

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the respondent delivered vacant possession, to be paid to the second appellant, at RM7,200 a month as particularised below with interest on double rental at the rate of eight per cent per annum, costs and such other relief:

DOUBLE RENTAL

For the first appellant:

A. For the period between 01/09/92 till 04/05/93 at the rate of RM7,200 per month

i) RM7,200 x 8 months (01/09/92 till 30/04/93)	RM 57,600
ii) RM7,200 ÷ 31 days x 4 days (01/05/93 till 04/05/93)	RM 929.03
	RM58,529,03

For the second appellant:

A. For the period between 05/05/93 till 31/05/93 at the rate of RM7,200. per month

i) RM7,200 ÷ 31 days x 27 days (05/05/93 till 31/05/93)	RM 6,270.97
ii) RM7,200 x 9 months (01/06/93 till 28/02/94)	RM 64,800
	RM71,070.97

In addition, the first appellant had asked for the interest earned on the RM18 million which they had to pay to the second appellant which had been computed as follows:

COMPUTATION OF INTEREST

A. On the sum of RM1,950,000

i) From 28/01/93 till 28/7/93 as pleaded in the statement of claim	RM73,399.43
ii) From 29/07/93 till 29/10/94	RM33,666.90
iii) From 30/10/93 till 28/02/94	RM42,798.49

	RM149,864.82

B. On the sum of RM16,050,000

i) From 28/01/93 till 28/07/93 as pleaded in the statement of claim	RM604,133.73
ii) From 29/07/93 till 29/10/93	RM27,l04.47
iii) From 30/10/93 till 28/02/94	RM349,905.44
	RM1,231,143.64

Total: RM1,381,008.46

The appellants had applied for summary judgment under O. 14 of the Rules of the High Court 1980 on 15 November 1993. The affidavit in support had restated the allegations in the statement of claim. It has been emphasised by learned Counsel for the appellants that as at the date of the notice to terminate the tenancy, it was a monthly tenancy and only one month's notice was necessary.

The learned trial Judge held on 27 March 1995 that since the respondent had been a tenant on the premises since 1982 on a yearly tenancy until the first appellant took over the property, which fact he said is not disputed by the first appellant, and since there is no written agreement to state that it was a monthly tenancy from then on, the tenancy remains a yearly tenancy and therefore the one month's notice to quit given on 30 July 1992 was not valid. He had accordingly dismissed the application for summary judgment.

Leave to appeal against that decision was granted by this Court on 26 June 1995.

Learned Counsel for the appellants had submitted that the respondent is estopped from claiming that there is a tenancy other than a monthly tenancy as there is no documentary evidence to support their claim. Even if the respondent's claim was true, he added, the first appellant was not bound in view of sub-s. (3) of s. 213 of the National Land Code (hereinafter 'the Code') which reads:

(3) Notwithstanding the provisions of sub-s. (2), no tenancy exempt from registration granted after the commencement of this Act shall be binding on –

(a) any person or body to whom the grantor subsequently transfers the reversion expectant thereon, or to whom he subsequently grants any lease, sub-lease, tenancy or charge, or in whose favour any lien over that reversion is subsequently created; or

(b) any person or body claiming through or under such a person or body,

unless, prior to the date on which the dealing referred to in para. (a) takes effect, the tenancy has become protected by an endorsement on the register document of title to the land pursuant to Chapter 7 of Part Eighteen.

Learned Counsel had refered to *Than Kok Leong v. Low Kim Hai* [1983] 1 MLJ 187 where the plaintiff had purchased the relevant premises as regards which the defendant was the tenant paying RM950 per month. On 26 January 1978, the plaintiff as registered proprietor gave the defendant a notice to quit which notice expired on 28 February 1978. The defendant refused to vacate.

The defendant contended that his tenancy was a lease pursuant to an oral agreement made between him and the former landlord who had granted him an oral lease for a period of three years commencing on 1 January 1974 with an option to renew for the same period of three years to be exercised by him.

The issue before the Court was the effect of such an oral and unregistered lease. It was held by the High Court that the said oral agreement came under s. 213 of the Code and was therefore not binding on the plaintiff. Further, sub-s. (2) of s. 228 of the Code likewise provides that an option conferred by any oral tenancy shall be unenforceable against any transferee of the reversion expectant thereon.

The appeal against that decision was heard on 23 September 1982 and the Federal Court had dismissed it with costs. Similarly here, we were of the view that the first appellant was not bound by the oral tenancy existing thereon when he bought over the premises on 16 November 1990.

Vacant possession was only given on 28 February 1994 which was eighteen months after 31 August 1992, that is, the date of expiry of the one month's notice. Although he conceded that it was a monthly tenancy as the first appellant was not bound by the earlier tenancy, learned Counsel for the respondent had argued that the monthly tenancy had to be pleaded. He further stated that there were no particulars when it was entered into and when it would expire as there was no anniversary date. He also submitted that in view of the O. 14 application, no statement of defence had been filed by the respondent.

Since the first appellant became the registered proprietor on 16 November 1990, he added, the anniversary of the monthly tenancy should be the 16th of each and every month thereafter but on the facts of this case, the respondent did not know on what date the rental was to be paid or for what period.

The affidavit in reply of the respondent had categorically stated that they had been the tenant on the premises since 1982 well before the first appellant took over the proprietorship. They insisted that the tenancy was a yearly tenancy and as such the one month's notice to quit given by the first appellant was not valid. In any case, they had further averred, vacant possession was no longer in issue as the premises had been handed over to the appellants on 28 February 1994, long before the arguments at the O. 14 application. They also said that since 1982 the tenancy was for two years and the renewal was also for that period and this had not been denied by the first appellant.

Learned Counsel for the respondent further reiterated that the statement of claim was defective in particular as regards the date the keys were handed over on 28 February 1994. He emphasised that this was not a case when the respondent had refused to pay rental but it was because their payments were not accepted. The respondent was agreeable, learned Counsel had further submitted, to pay the double rental but not damages.

He had cited *Lemon v. Lardeur* [1946] 1 KB 613 where the plaintiff was the landlord and the defendant the tenant of a dwelling house let upon a four-weekly tenancy. No evidence was given as to the date of the commencement of the tenancy. A letter dated 20 July 1945 was sent to the defendant, which purported to be a notice to quit, in the following terms: "This is to confirm that I wish to give you a month's notice as from 1 August 1945 to vacate 'Stella Maris'." The letter was signed by the plaintiff's husband. The plaintiff claimed possession by virtue of the notice. The County Court Judge held that the notice was a good notice and made an order for possession. It was held that in the case of every periodic tenancy, including monthly and weekly tenancies, a notice to quit must expire at the end of a current period of the tenancy (*Queen's Club Gardens Estate, Ltd. v. Bignell* [1924] 1 KB 117, considered and approved, *Simmons v. Corssley* [1922] 2 KB 95, disapproved.) It is for the landlord to prove that the notice he gives expires on the correct date. Secondly, that where a notice to quit is given by a particular agent, having a limited authority only, such notice should be given in the name of the principal or expressly on his behalf and, if not so given, is bad.

We saw no merit in all these arguments as apart from the fact that learned Counsel for the respondent had conceded that it was a monthly tenancy which meant that the notice to quit was valid, the respondent had also agreed to pay the double rental but not the damages. On this concession alone, it meant that

there were no triable issues as regards the monthly tenancy and the validity of the notice to quit, and the double rental. Only damages became an issue.

The short reply of learned Counsel for the appellants was that there is nothing in law that limits the remedy. Over and above the double rental, he insisted, the appellants were entitled to damages which they had particularised. He said the sale could not be completed simply because the respondent was holding over.

Although learned Counsel for the appellants said that the issues were the same for the second appellant, learned Counsel for the respondent submitted that the Code applied to the second appellant and they should not get the double rental as at most they could only sue the respondent as licencee and a licencee did not require a notice to quit. The second appellant had to apply for leave to bring the appeal and the question of law had to be determined at a trial. As such, he asserted that an O. 14 application was not the appropriate remedy as there were issues to be tried. Again, we found no merit in this submission as the second appellant was already the registered proprietor on 5 May 1993.

After all that has been said, we concluded that even if the respondent was a tenant on a yearly tenancy with the previous landlord, which fact has not actually been supported by any evidence, the first appellant was not at all bound based on the provisions in the Code and the case authorities cited and it was entirely up to the first appellant to state on what terms the tenancy would be allowed to continue, when it was allowed to be continued.

Our conclusion is further cemented by the fact that there is correspondence in the appeal record, as highlighted by learned Counsel for the appellants, that the first appellant's secretary had on 24 October 1991 written to the respondent, which letter had been acknowledged by the respondent, terminating the tenancy which is on a month to month basis with effect from 31 December 1991.

The reply dated 11 November 1991 signed by the managing director of the respondent stated that they had managed to purchase a shop lot down the road but as the tenant of that shop lot could only vacate the premises by the end of March 1992, the respondent would need two months to renovate. In view of that, they had asked for an extension of time until the end of May 1992. The effect of this letter is that the respondent did not, at that point of time, dispute that the tenancy was a monthly tenancy. For that very reason, we are of the view that they are now estopped from denying it at this juncture.

Pursuant to that reply, the first appellant's secretary had written to the respondent on 10 December 1991 agreeing to the extension subject to certain conditions including that the monthly rental was to be paid by the 7th of each month, the respondent was to vacate the premises in good, clean and tenantable condition, all arrears amounting to RM10,300 was to be paid before 17 December 1991 and a bank guarantee for RM75,000 was to be given by the respondent in favour of the first appellant in the event vacant possession was not delivered.

By letter dated 13 May 1992, the managing director of the respondent had again written to the first appellant asking for a further extension up to 31 December 1992 as the present tenant to the shop lot they bought had asked for a further extension. The first appellant was not agreeable and by letter dated 22 May 1992 had categorically told the respondent that they were willing to continue the lease on a month to month basis with one month's notice should either party wish to terminate the tenancy.

As for the issue of double rental, *Atkin's Encyclopaedia of Court Forms in Civil Proceedings*, 2nd Edn., Vol. 24(1) 1995 Issue at pp. 55 and 56 states:

> 31. **Action for double rent.** Where a tenant has power to determine his tenancy by notice to quit and gives such a notice but fails to deliver up possession at the time specified in the notice during the time that he holds over after the expiration of the notice, he is liable to pay to the landlord double the rent payable under the tenancy. This may apply even to a tenant protected by the Rent Act 1977, though the point is doubtful. The notice to quit must be a valid notice, and if it is waived a fresh tenancy is created. The same remedies are open to the landlord for recovery of the double rent as for the single rent, but the tenant's liability ceases on his vacating the premises, and a fresh notice to quit is not necessary for this purpose.
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> 32. **Action for double value.** A tenant for a term of years which has expired, or any person in possession of the premises under or by collusion with him, who wilfully holds over after demand made and notice in writing for delivery of possession given by the reversioner or his lawfully authorised agent is liable to pay to the reversioner at the rate of double the yearly value of the premises; no relief in equity is available against this penalty. The holding over must be wilful and contumacious in the sense that the tenant knows he has no right to keep possession, and not under a *bona fide* mistake or under a fair claim of right even if ill-founded. The action will not lie in the case of a subtenant holding over without the tenant's consent or of a statutory tenant holding over by virtue of the Rent Act 1977.
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> The double value is calculated from the date of determination of the tenancy or the date of giving the notice, whichever is the later. If the landlord accepts a single rent during his entitlement to double value it is a question of fact whether this constitutes a waiver of the claim to double value.

In *Cheng Hang Guan & Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & Ors.* [1993] 3 MLJ 352, Edgar Joseph Jr SCJ, sitting as a High Court Judge, said:

> The general rule as to the measure of damages, a rule equally applicable to tort as to contract, was defined by Lord Blackburn in *Livingstone v. Rawyards Coal Co.* [1880] 5 App. Cas. 35, at p. 39 in these terms: 'that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation.'
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> In *Munnelly v. Calco* [1978] IR 387, Henchy J said, at p. 399:
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> > ... the particular measure of damages allowed should be objectively chosen by the Court as being that of the particular case, to put the plaintiff fairly and reasonably in the position in which he was before the damage occurred, so far as pecuniary awards can do so.
>
> Before I proceed to assess the quantum of damages, I would remind myself of certain other well-established principles which I should keep in the forefront of my mind in considering this part of the case.
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> First, when a plaintiff claims damages from a defendant, he has to show that the loss in respect of which he claims damages was caused by the defendant's wrong and also that the damages are not too remote to be recoverable.
>
> Secondly, I would refer to what Lord Goddard said in *Bonham-Carter v. Hyde Park Hotel Ltd.* [1984] 64 TLR 177, at p. 178:
>
> > Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it.
>
> Thirdly, on the quality of evidence expected of a plaintiff, it is necessary to remember what Devlin J (as he then was) said in *Biggin & Co. v. Permanite* [1951] 1 KB 422; [1950] 2 All ER 859, at p. 438, namely, that where precise evidence is obtainable, the Court naturally expects to have it; where it is not, the Court must do the best it can. Nevertheless, it remains true to say that that generally, difficulty of proof does not dispense with the necessity for proof. (See *Aerial Advertising Co. v. Batchelors Peas (Manchester)* [1938] 2 All ER 788 at p. 796 per Atkinson J) The case of *Ashcroft v. Curtin* [1971] 1 WLR 1731; [1971] 3 All ER 1208 illustrates this point, for there the plaintiff, claiming for diminution of profits of his one-man business, failed in his claim despite the evidence pointing to a decrease in the company's profitability due to the injury, the records relied on being too rudimentary and the accounts too unreliable to quantify the loss.

It was held in *Mohamed Abu Bakar s/o Yusof v. PA Syed Aboothahir s/o P Ahmed* [1990] 1 MLJ 26 that mesne profits are in the nature of damages for trespass and they are assessed on the basis of the value of the premises at the relevant time, that is to say, at the time judgment was pronounced in the Court below. It was also held that the appropriate order to make was that the defendant be chargeable with double the market rental value of the premises from the date of expiry of the notice to quit to the date when possession was handed over to the plaintiff with the rider that the damages payable be limited to the jurisdiction of the particular Court.

Over in Singapore, it has been ruled in *Gracie Teo v. Tay Leng Hong & Ors.* [1987] 2 MLJ 435 that once there is a holding over of the tenancy of a property, the landlord is entitled to double rent until possession is given or double the value during the period of detention of the property. It is not a requirement that there should be a wilful holding over on the part of a tenant.

Paragraph (a) of sub-s. 4 of s. 28 of the Civil Law Act 1956 states:

> (4)(a) Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

On these considerations, we had to disagree with the learned trial Judge that the tenancy was not a monthly tenancy and that the notice to quit was not valid. The supporting documentary evidence certainly indicate that it was a monthly tenancy and the respondent was certainly holding over after the expiry of the notice to quit. Their subsequent delivery of vacant possession only show that they knew they were occupying the premises wrongly. In these circumstances, the appellants are certainly entitled to double rental after the expiry of the tenancy. The damages asked for were only in the form of the reimbursement of the interest for the period the appellants were deprived of the possession of the premises and we held that since this was the direct result of the respondent's wrongdoing, the appellants were certainly entitled to claim them.

There are therefore no issues to be tried. We would allow the appeals with costs here and below and order double rental, damages and interest as computed. The deposits are to be refunded to the appellants.

Reported by Ling Hea Hoon